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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H 2009 587

**GEORGE AYAD MAKARY**

**STATEMENT OF ISSUES**

8653 Mayne Street  
Bellflower, California 90706

Respondent.

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs (Board).

2. On or about September 10, 2009, the Board received an application for a Respiratory Care Practitioner License from George Ayad Makary (Respondent). On or about August 20, 2009, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on December 14, 2009.

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## JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code), unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3732, subdivision (b) of the Code states:

"The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

7. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

" . . .

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

" . . . "

8. Section 3752 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license

1 suspended or revoked, or may decline to issue a license, when the time for appeal  
2 has elapsed, or the judgment of conviction has been affirmed on appeal or when an  
3 order granting probation is made suspending the imposition of sentence,  
4 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing  
5 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or  
6 setting aside the verdict of guilty, or dismissing the accusation, information, or  
7 indictment.”

8 9. California Code of Regulations, Title 16, section 1399.370, states:

9 “For the purposes of denial, suspension, or revocation of a license, a crime  
10 or act shall be considered to be substantially related to the qualifications, functions  
11 or duties of a respiratory care practitioner, if it evidences present or potential  
12 unfitness of a licensee to perform the functions authorized by his or her license or  
13 in a manner inconsistent with the public health, safety, or welfare. Such crimes or  
14 acts shall include but not be limited to those involving the following:

15 “ . . .

16 “(c) Conviction of a crime involving driving under the influence or reckless  
17 driving while under the influence.

18 ” . . . . ”

### 19 **COST RECOVERY**

20 10. Section 3753.5, subdivision (a) of the Code states:

21 "In any order issued in resolution of a disciplinary proceeding before the  
22 board, the board or the administrative law judge may direct any practitioner or  
23 applicant found to have committed a violation or violations of law or any term and  
24 condition of board probation to pay to the board a sum not to exceed the costs of  
25 the investigation and prosecution of the case."

26 11. Section 3753.7 of the Code states:

27 "For purposes of the Respiratory Care Practice Act, costs of prosecution  
28 shall include attorney general or other prosecuting attorney fees, expert witness

1 fees, and other administrative, filing, and service fees."

2 12. Section 3753.1, subdivision (a) of the Code states:

3 "An administrative disciplinary decision imposing terms of probation may  
4 include, among other things, a requirement that the licensee-probationer pay the  
5 monetary costs associated with monitoring the probation."

6 **CAUSE FOR DENIAL OF APPLICATION**

7 **(Conviction of a Crime)**

8 13. Respondent's application is subject to denial under Business and  
9 Professions Code sections 3750, subdivision (d), and 3752, and California Code of  
10 Regulations, Title 16, section 1399.370, subdivision (c), in conjunction with section 3732,  
11 subdivision (b), in that Respondent was twice convicted of a crime substantially related to  
12 the qualifications, functions, and duties of a respiratory care practitioner. The  
13 circumstances are as follows:

14 15. On or about March 18, 2005, an officer from the Los Angeles Police  
15 Department responded to a report of a traffic collision in Los Angeles, California.  
16 Upon arrival, the officer observed Respondent standing next to his vehicle which  
17 had sustained damage to the right side. The Respondent was noted to have alcohol  
18 on his breath with watery and bloodshot eyes. When the officer asked if  
19 Respondent had been drinking, he responded that he had three (3) beers about two  
20 and a half hours ago. Based on Respondent's appearance and statements, a field  
21 sobriety test was administered. Upon failure to successfully perform the field  
22 sobriety test, Respondent was arrested and transported to the Los Angeles Airport  
23 Police Station. Two subsequent breathalyzer tests revealed a blood alcohol count  
24 of .10 and .11.

25 16. On or about June 23, 2005, in a case entitled the *People of the State*  
26 *of California v. George A. Makary*, Los Angeles Superior Court Case No.  
27 5WL01780, Respondent was charged with one count of driving under the influence  
28 of alcohol or drugs, in violation of Vehicle Code section 23152, subdivision (a), a

1 misdemeanor (Count 1), and driving a vehicle with a blood alcohol count of .08 or  
2 higher, in violation of Vehicle Code section 23152, subdivision (b), a  
3 misdemeanor (Count 2).

4 17. On or about August 9, 2005, Respondent pled nolo contendere and  
5 was convicted of driving a vehicle with a blood alcohol count of .08 or higher  
6 (Count 2). As to Count 1, the Court dismissed the charges, and Respondent was  
7 placed on summary probation for a period of thirty-six (36) months under the  
8 following terms and conditions:

- 9 a. Pay a fine of \$390.00;
- 10 b. Enroll and successfully complete a three (3) month licensed  
11 first-offender alcohol counseling program;
- 12 c. Restrict driving for ninety (90) days to and from work,  
13 during work, and to and from counseling program;
- 14 d. Pay a restitution fine; and
- 15 e. Standard terms and conditions of probation.

16 18. On or about March 21, 2009, an officer from the Garden Grove  
17 Police Department stopped Respondent at a DUI checkpoint. Respondent did not  
18 have his California driver's license and was observed to have slurred, slow speech,  
19 with watery eyes. Respondent was also noted to have the smell of alcohol on his  
20 breath. Upon questioning, Respondent stated that he had two (2) glasses of wine  
21 about an hour to an hour and a half ago. Upon failure to complete the field  
22 sobriety test, Respondent was arrested for driving under the influence of an  
23 alcoholic beverage.

24 19. On or about August 31, 2009, in a case entitled the *People of the*  
25 *State of California v. George Ayad Makary*, Orange County Superior Court Case  
26 No. 09WM08052, Respondent was charged with one count of driving under the  
27 influence of alcohol or drugs, in violation of Vehicle Code section 23152,  
28 subdivision (a), a misdemeanor (Count 1), and driving a vehicle with a blood

1 alcohol count of .08 or higher, in violation of Vehicle Code section 23152,  
2 subdivision (b), a misdemeanor (Count 2).

3 20. On or about November 9, 2009, Respondent pled guilty and was  
4 convicted of driving a vehicle with a blood alcohol count of .08 or higher (Count  
5 2). As to Count 1, the Court dismissed the charges, and Respondent was placed on  
6 informal probation for a period of five (5) years under the following terms and  
7 conditions:

- 8 a. Pay a fine of \$390.00;
- 9 b. Serve forty-five (45) days in an Orange County jail;
- 10 c. Enroll and successfully complete an eighteen (18) month  
11 multiple offender alcohol counseling program;
- 12 d. Attend and complete Mother's Against Drunk Driving  
13 (MADD) Victim's Impact Panel;
- 14 e. Pay a restitution fine; and
- 15 f. Standard terms and conditions of probation

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters  
18 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

19 1. Denying the application of George Ayad Makary for a Respiratory  
20 Care Practitioner License;

21 2. Directing George Ayad Makary to pay the Respiratory Care Board  
22 the costs of the investigation and enforcement of this case, and if placed on  
23 probation, the costs of probation monitoring; and,

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3. Taking such other and further action as deemed necessary and proper.

DATED: March 2, 2010

Original signed by Liane Freels for: \_\_\_\_\_  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant